

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:19-CR-3
Judge Bailey

MICHAEL JOHN MAISEY,

Defendant.

**MEMORANDUM OPINION AND ORDER
DENYING RECOMMENDATION FOR HOME CONFINEMENT**

Pending before this Court is a motion seeking the appointment of counsel for Mr. Maisey's appeal of this Court's denial [Doc. 73] of his Motion to Reconsider Order Denying Motion to Transfer to Home Confinement and Renewed Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) [Doc. 59]. In his motion, Mr. Maisey sought both home confinement and compassionate release. There is also pending as a motion, an untimely response to the Government's response to the motion to reconsider.

With respect to the defendant's request for appointed counsel, this Court has followed Supreme Court precedent in holding that "[t]here is no right to counsel in post-conviction hearings." **United States v. Estelle**, Crim. Act. No. 5:12-CR-20, Doc. 1146 at 2, (N.D. W.Va. filed June 22, 2020) (quoting **Pennsylvania v. Finley**, 481 U.S. 551, 556–57 (1987)).

Specifically, with respect to the instant case, a petitioner has no Sixth Amendment right to counsel in connection with a § 3582(c) motion. The courts of appeals to address

the issue have uniformly held that a defendant does not have a Sixth Amendment right to counsel in connection with a § 3582(c) motion filed after a defendant's direct appeal has concluded. See, e.g., **United States v. Reddick**, 53 F.3d 462, 465 (2d Cir. 1995); **United States v. Hart**, 331 F.App'x 972 (3d Cir. 2009); **United States v. Legree**, 205 F.3d 724, 730 (4th Cir. 2000); **United States v. Whitebird**, 55 F.3d 1007, 1011 (5th Cir. 1995); **United States v. Forman**, 553 F.3d 585, 590 (7th Cir. 2009) (per curiam), *overruled on other grounds by United States v. Taylor*, 778 F.3d 667 (7th Cir. 2015); **United States v. Brown**, 565 F.3d 1093, 1094 (8th Cir. 2009); **United States v. Townsend**, 98 F.3d 510, 512–13 (9th Cir. 1996); **United States v. Brown**, 556 F.3d 1108, 1113 (10th Cir. 2009); **United States v. Webb**, 565 F.3d 789, 793–95 (11th Cir. 2009).

The petitioner also has no statutory right to counsel. The pertinent statutory provision, the Criminal Justice Act, 18 U.S.C. § 3006A(c), states in relevant part: “A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance . . . through appeal, including ancillary matters appropriate to the proceedings.” Courts have consistently found that a § 3582 proceeding is not an “ancillary matter” as set forth in § 3006A, and have likewise held that a defendant does not have a statutory right to counsel in connection with a § 3582(c) motion. See, e.g., **Whitebird**, 55 F.3d at 1010 (defendant has no statutory right to counsel in connection with a § 3582(c) motion because such a motion is not an “ancillary matter” under § 3006A); **Reddick**, 53 F.3d at 464–65 (same); cf. **Burrell v. United States**, 332 A.2d 344, 347 (D.C. 1975) (defendant has no statutory right to counsel in connection with motion to reduce sentence under Rule 35(b)).

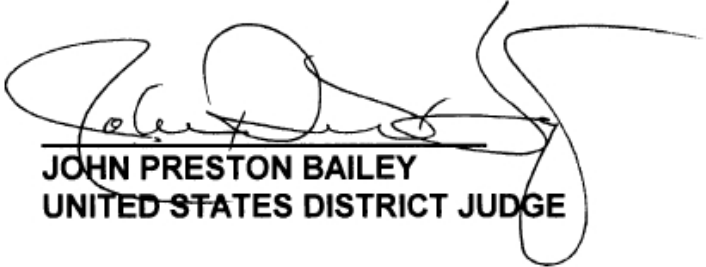
Accordingly, the defendant's motion for the appointment of counsel [**Doc. 75**] is **DENIED**.

With respect to Mr. Maisey's other filing [**Doc. 84**], to the extent that this constitutes yet another motion seeking compassionate release, the same is **DENIED** as duplicative of the motion and order on appeal.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: October 1, 2020.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE